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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Christian DURAFFOURD, et al.

Date: November 13, 2006

Serial No.: 10/502,237

Group Art Unit: 2122

Filed: July 22, 2004

Examiner: Jerry Lin

## For: **METHOD FOR DETERMINING A PATIENT'S BIOLOGICAL STATE**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

## **RESPONSE TO RESTRICTION REQUIREMENT**

Sir:

This is a response to the Species election requirement mailed October 16, 2006 in the above-identified application.

According to the Office Action, there are eleven (11) claims presently pending in this application. Applicants submit that there are actually twelve (12) claims pending. In the Preliminary Amendment filed July 22, 2004 with this application, claims 1, 3-5, 8, 9 and 11 were amended and new claim 12 was added to the application. The Examiner is respectfully requested to confirm that the correct number of pending claims is twelve (12) claims in his next Communication with applicants' representatives.

Further to the above, in the October 16<sup>th</sup> Office Action, applicants are requested to elect one from Species A, comprised of “optional” substances, and one from Species B, drawn to an index.

In response, applicants respectfully wish to bring to the Examiner's attention the fact that the choice of the optional substance and of the index is completely dependent upon the type of analysis which is to be performed by the user of the claimed method. Some uses of applicants' method in fact require no optional substance from Step 2 of Claim 1. For example, in the

method for analyzing the growth process of children and adolescents, no optional substance is used (hence the use of the term "optional"), while the index chosen is Index J6.

In response to the Examiner's election requirement, therefore, applicants therefore respectfully choose to elect a methodology using no optional substance while electing J6 as the index. Claims 2, 3 and 4 read on the elected species, whereas claims 1 and 7-12 are generic.

The species election is not traversed.

### **CONTINGENT EXTENSION REQUEST**

If this communication is filed after the shortened statutory time period had elapsed and no separate Petition is enclosed, the Commissioner of Patents and Trademarks is petitioned, under 37 C.F.R. § 1.136(a), to extend the time for filing a response to the outstanding Office Action by the number of months which will avoid abandonment under 37 C.F.R. § 1.135. The fee under 37 C.F.R. § 1.17 should be charged to our Deposit Account No. 15-0700.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on: November 13, 2006

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November 13, 2006  
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Respectfully submitted,

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